

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MARY B. SMITH,

Plaintiff

vs.

DAVID C. NICHOLSON, TRUSTEE
OF THE D.J.J. REALTY TRUST,
DOMINIC M. SAWICKI,
TRUSTEE OF THE DOMINIC M.
SAWICKI NOMINEE TRUST,
AND CAROL ANN WHITNEY
AND GLENN WHITNEY,

Defendants

CIVIL ACTION NO.: 04 CV 10632 MEL

**DEFENDANTS, DAVID C. NICHOLSON, TRUSTEE OF THE D.J.J. REALTY TRUST,
DOMINIC M. SAWICKI, TRUSTEE OF THE DOMINIC M. SAWICKI NOMINEE
TRUST, CAROL ANN WHITNEY AND GLENN WHITNEY'S
JOINT MOTION FOR SUMMARY JUDGMENT**

EXHIBIT 4

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MARY B. SMITH
Plaintiff

CIVIL ACTION: 04CV10632MEL

v.

DAVID C. NICHOLSON, et al
Defendant

December 1, 2004

**PLAINTIFF'S RESPONSES TO DEFENDANT NICHOLSON'S
FIRST SET OF INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS**

1. Please state your full name, residence, business address, occupation, date of birth and social security number.

Mary B. Smith, 464B Heritage Village, Southbury, CT 06488, retired, May 9, 1918, 046-52-8615.

2. Please state how the alleged incident occurred, stating what you did, saw and heard.

See attached letter of October 30, 2003 to Ms. Diane Varadian of Provident Mutual Insurance Company, Defendant's insurer.

3. Please describe exactly where and when the alleged incident took place, giving a complete locus of the alleged incident.

See answer to No. 2, above.

4. Please describe fully the conduct of the defendant which you allege in your complaint constituted "negligence".

The defendant, and the other defendants, was negligent in failing to maintain, or keep in good repair, Olde Lantern Lane, a private thoroughfare owned by the defendants and which defendants knew was used by others as access to the defendant's residence.

- 5. If within ten years prior to the incident alleged in your complaint your physical or mental condition was affected by illness, operation, injuries or accident, please state full details of each.**

In December of 1999, I fell at the Chase Plaza Shopping Center in Waterbury, CT breaking my right hip. I was hospitalized at Waterbury (CT) Hospital where I received a hip replacement from Dr. William Flynn.

In December of 2000, while visiting my daughter in Hollywood, FL, I tripped on an uneven sidewalk and fell, injuring my left wrist and shoulder. When I returned to CT the next day, I had x-rays and outpatient treatment at Waterbury (CT) Hospital for a sprained wrist and shoulder, and recovered without incident.

- 6. If, subsequent to the incident alleged in your complaint your physical or mental condition was affected by illness, operation, injuries or accidents, please state full details of each.**

See response to No. 2, above, and details contained in the letter.

- 7. Please identify your current primary care physician, as well as any prior primary care physicians for the past ten years, including in your answer their address or addresses.**

Dr. O. Joseph Bizzozero, Jr., M.D., 140 Grandview Avenue, Waterbury, CT 06708.

- 8. No Interrogatory numbered 8.**

- 9. Please give the substance of any conversations you have had with the defendant following said alleged incident indicating who said what to whom, who was present and where said conversations took place.**

None.

- 10. Please state in detail the circumstances under which you were present on the premises where the alleged incident occurred.**

I had accompanied my oldest son's girlfriend, Ms. Joanne Dayton, to Mr. Nicholson's wife's funeral, and was returning with Ms. Dayton to the Defendant's residence. Ms. Dayton's son, Paul Dayton, was engaged to Mr. Nicholson's daughter, Joann, at the time. We were required to walk from where we parked on Olde Homestead Way to the Nicholson residence due to the numerous cars parked at the Nicholson residence and at the house on Olde Lantern Lane.

11. Please state specifically the basis for your complaint that the defendant was negligent:

a. In the maintenance of the premises:

Olde Lantern Lane is a private way which, according to the Town of Harwich, the private property owners are responsible for maintaining. On April 6, 2002, the date of my fall, Olde Lantern Lane was in complete disrepair, with major washouts and potholes, loose rocks the size of baseballs, and very uneven surfaces. It is my understanding that the surface of the Lane was resurfaced within weeks of my fall.

b. In the control of the premises:

I have no knowledge of whether or not the Defendant was negligent in the control of the premises other than the state of disrepair of Olde Lantern Lane.

c. In the inspection of the premises:

Defendant was certainly negligent in his inspection, or lack of inspection, of the premises. A cursory visual inspection of the premises would have informed the defendant of the dangerous condition of the surface of Olde Lantern Lane, especially for someone walking on the rocky, uneven and sloping surface.

d. In the repair and building of the premises:

While I am not sure if the defendant was negligent in the building of Olde Lantern Lane, he, and perhaps others, was certainly negligent for not maintaining or repairing the Lane.

e. In failing to give adequate and effective warning to the plaintiff:

Defendant knew, or should have known, of the unsafe and hazardous condition of Olde Lantern Lane leading down the steep grade to his residence, especially for anyone walking from Olde Homestead Way down Olde Lantern Lane. The surface was in such disrepair that caution signs should have been posted, or someone should have been at the entrance to the Lane warning pedestrians of the dangers ahead.

12. If you claim you received injuries as the result of a defect on the premises owned or controlled by the defendant, kindly describe said defect.

See response to Interrogatory 11. a., above.

13. If you allege that your fall was the result of any violation of any code, regulation, ordinance, statute or other law, please identify such violation and describe how said violation caused or contributed to your fall.

The condition of Olde Lantern Lane on April 6, 2002 may have been in violation of the Bylaws and Ordinances of the Town of Harwich, Article III, Public and Private Ways. (Attached) More information on possible violations may be discovered during discovery of the Defendants, to be conducted.

- 14. Please describe any and all injuries sustained as the result of the incident alleged in your complaint.**

See answer to Interrogatory 2, and letter attached.

- 15. If, as a result of injuries sustained in the alleged incident, you were taken to, treated at or confined in a hospital, please state:**

See answer to Interrogatory 2, and letter attached.

- 16. If, as a result of injuries you sustained in the alleged incident, you were seen by any doctor outside of a hospital, please state:**

See answer to Interrogatory 2, letter attached, and doctor and hospital invoices and reports previously produced.

- 17. If you were confined to the house and/or bed as a result of the injuries sustained in the alleged incident, please state exactly which you were confined to, and the inclusive dates of your confinement.**

See answer to Interrogatory 2, letter attached, and doctor, hospital and rehabilitation invoices and reports previously produced.

- 18. If you claim to be permanently injured as a result of the alleged incident, please state the nature and extent of the permanent injury, the name of the doctor who diagnosed it as such and the degree of limitation due to such an injury.**

See answer to Interrogatory 2, and letter attached. In addition, see attached letter of February 24, 2004 of Dr. O. Joseph Bizzozero, M.D., describing my injuries, operations, rehabilitation, continuing treatment, and my disability.

- 19. Please state fully and completely all expenses incurred by you or on your behalf to date resulting from the alleged incident.**

See answer to Interrogatory 2, letter attached, and other material previously produced. My medical bills are in excess of \$51,000.00, out of pocket medical expenses of over \$3,100.00, and I have continuing doctor and rehabilitation expenses.